



HUMAN RIGHTS AND LEGAL PROTECTION TO ELDERLY PERSONS IN INDIA

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ABSTRACT

Old age is a process which occurs naturally in the human life cycle. "It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences in many walks of life. They are the senior participants of the family system who recognize better the faith, family history, values and related customary practices. The main Objectives of this study is to study the status of human rights of elderly persons in India and factors responsible for its non implementation. And to study and analyze the existing legal provisions, policies of government for the protection, maintenance and welfare for the elderly people in India. It can be said that we have legal mechanism under different laws to protect the rights of elderly. Our social security mechanism is disappeared with the passage of time. That is why elderly need other option that is legal mechanism. But this mechanism requires attention and efforts of the aggrieved party. There is no doubt that welfare officer do the formalities for the protection of the rights of elderly on their behalf. Still elderly must have the knowledge and awareness about the rights of themselves. It can be said that we have legal mechanism under different laws to protect the rights of elderly."

KEYWORDS: Human Rights, Rights of Elderly, Legal Protection in India

INTRODUCTION

Old age is a process which occurs naturally in the human life cycle. "It is the decline in the capacity of the functioning of the organs of human body. However, they constitute a reservoir of human resource, gifted with knowledge, deep insights and varied experiences in many walks of life. They are the senior participants of the family system who recognize better the faith, family history, values and related customary practices. They own better information of the family values and society. The population of the aged has been increasing over the years with the growing exposure of human towards industrialization in 20th century, the consequential rush towards consumerism has deeply ruptured the intactness of social fabric. Therefore, the elderly persons in the society are made subject to various discriminations, torture and negligence."

India has by tradition consists of societies "wherein ageing persons are paid utmost respect and regard. These elderly people find a special place for them in our customs, culture, and scriptures. Unfortunately, India also stands as no exception to the increasing trend of human rights violations against elderly people. As human being, there are many categories recognized by legal system it includes child, woman, man, and especially senior citizens. With changing nature of society, protection of rights of elderly persons has been constantly burning and critical issue. The issues related to elderly persons are untouched and remained as "silent process" only. It needs to get clear platform and effective implementation of laws at municipal and international level. India is currently home to about 1.21 billion people, the second most populous country in the world, accounting for 17 percent of the world's population. India crossed the 1 billion mark in the year 2000. One year after the world's population crossed 6 billion thresholds. Demographers expect India's population to surpass the population of China currently the most populous country in the world, by 2030. Population projections for India anticipate that the country's population will reach between 1.5 and 1.7 billion by 2050."

According to UN by 2050, "nearly 20% of India's population will comprise of people over the age of 60 years. Considering the magnitude of the problem the United Nations proposed a Draft Declaration on Old Age Rights in 1948. Again in 1969, this item was placed on the agenda of the General Assembly. In 1972 the Economic and Social Council (ECOSOC) of the UN deliberated on this issue at length but it could not be adopted. The first World Assembly on Ageing (WAA) was held in Vienna, Austria, in August, 1982."

In India, the Protection of Human Rights Act, 1993 says that "Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." The concept of Human Rights is a 20th century concept. "It was traditionally known as natural rights or the rights of man. In the 18th century in Europe, several political philosophers developed the concept of 'natural right' in line with the law of nature. These are the rights belonging to a person by nature and because he is a human being and not by virtue of his citizenship in a particular country or membership in a particular religion or ethnic group."

Human Rights Regime came in India with the inauguration of the Constitution in

1950. "Human Rights concept in traditional India is different from the modern understanding. There, the society acted as a guarantor, but today it is the state that maintains rights. Hence, in spite of emerging human rights consciousness, everywhere, there are violations. Violations are not from the state apparatus alone, violations took place at family, neighborhood, work place, and by various non-state actors like religion political parties and other ethnic and cultural groups. India has always been proud of its enduring family values. The symbol of these values was the large joint family system, with three generations living under one roof."

Indian Constitution and Legal protection of social order

In the Indian Constitution, the directive principle under Article 41 highlights "the role of the State for the right to work, to education and to public assistance in old age, sickness and disablement. The Entry 24 of the Concurrent List of Seventh schedule is also directly related to welfare of elderly persons. This provision empowers both the Central and State governments to enact laws and policies for the welfare of the elderly. Reference towards the welfare of elderly people can also be drawn from the wordings of Art. 38 of the Constitution which casts a duty on the State to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

The government of India has approved "the National Policy for Older Persons (NPOPs) on 13 January 1999 in order to accelerate welfare measures and empower the elderly in various ways. There has been reportedly little progress in setting up a separate Bureau of Older Persons or an autonomous National Association of Older Persons, as laid down in the policy. The Ministry of Social Justice and Empowerment could not follow its mandate to make a detailed review of the progress made in the implementation of the policy after every three years. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted on 31 December 2007, which makes it a legal obligation for children and heirs to provide maintenance to senior citizens."

In India, the evaluation of state and national initiatives for providing social security to older women points to the serious lack of will to address their concerns. "The National Policy for Older Persons (NPOP) 1999, the first policy on older persons formed by the Ministry of Social Justice and Empowerment, does not pay adequate attention to gender issues. In the NPOP 1999, the sections on healthcare, nutrition, shelter and education do not have any specific reference to women's situation."

Elderly persons are also seen to suffer from "physical disabilities, financial insecurity and loneliness resulting from ostracism by the family and society. Owing to their economic dependency, social deprivation and change in behavior towards diet and health care, they become more vulnerable to malnutrition and ill health. Studies have shown that diet and nutrition play a crucial role in maintaining good health and functional status of elderly. But recent upheavals in the structure of the society and family have considerably changed their status and living conditions. For example, urbanization and the resultant changes in family structure, women employment, high cost of living, increasing materialism and individual orientation, all these lead to problems with accommodation and care

of the elderly in a family environment. Old age homes were established in urban and rural areas under the initiative of both Governmental and Non-Governmental agencies, to provide shelter and support to the old destitute. At present such institutional care is a source of relief to the aged in our society. As Sreevals and Nair pointed out, in the absence of joint family system, the old parents are sometimes left with no other alternative than joining the old age homes."

Statement of problems

Old age as discussed "above is a natural process therefore elderly people should enjoy human rights available to persons in general and certain additional rights in particular to balance the human rights scale. However, the laws and policies governing the welfare of elderly people are very scattered in India."

Objectives of this study

- To study the "status of human rights of elderly persons in India and factors responsible for its non implementation."
- To study and analyze "the existing legal provisions, policies of government for the legal protection, for the elderly people in India."

METHODOLOGY

The methodology adopted for this research is doctrinal in nature. "The sources used in the present study are based on secondary data only. Materials relevant to the topic available from Bare Acts, books, e-books, journals, e- journals articles and decided cases of various Indian courts, have been critically analyzed in order to conclude the present work. Doctrinal study includes the jurisprudential analysis the rights of elderly persons. For this purpose international and regional human rights documents, Declarations, Conventions, commentaries, digest, books and journals, periodical, Newspaper magazines, AIR, SCR, SCC, Published and unpublished matter, government record, documents, report etc. Provisions of the Constitution of India, 1950, Hindu Adoption and Maintenance Act, 1956, Criminal Procedure Code, 1973, Hindu Law, Maintenance of Parents and Senior Citizens Act, 2007 and National policy on Senior citizen, 2011 have been taken into consideration."

Human Rights and Legal Protection of Elderly Persons

Data "Projections of Population and sex Ratio of older Persons in India from 1961-2051

Table -1 : Population of older Persons (Millions)							
Age Group	1961	2001	2011	2021	2031	2041	2051
60 to 70 years	25	77	98	132	184	233	298
70 to 80 years	9	29	43	52	75	104	131
80 years and above	2	8	11	16	20	29	41

Source: Census of India (+ projection), Government of India

The Indian elderly population is currently "the second largest in the world. It is clear from the table those 98 million older persons in India, or 8.1 percent of total population, up from 77 million in 2001. The numbers of older persons in India is expected to increase three fold to 298 million in 2051, accounting for a little over 17 percent of the total population. The population aged 70+ increased from 9 million in 1961 to 29 million in 2001 and 43 million in 2011. The share of people aged 70+ in the total population increased from 2 percent in 1961 to 4 percent in 2011. The rapid growth in the population of older people within the total population will continue to grow from 2021 to 2051."

Table -2: Proportion of older Persons in The Population							
Age Group	1961	2001	2011	2021	2031	2041	2051
60 to 70 years	5.6	7.5	8.1	9.7	12.1	14.0	16.6
70 to 80 years	2.0	2.9	3.6	3.8	4.9	6.3	7.3
80 years and above	0.6	0.8	0.9	1.2	1.3	1.7	2.3

Source: Census of India (+ projection), Government of India

It is also clear from the table that "between 1961 and 2011, the population aged 60 and above nearly quadrupled. From 2011 to 2021, it is expected that the share of the population aged 60 and above will increase by about 2 percent every 10 year. The share of the population aged 70 and above also increased from 2.0 to 3.6 percent from 1961 to 2011, and the population share with persons 70 and above is projected to increase by about 1 percent by 2031, and 1 percent every 10 year up to 2051.

Table-3: Sex Ratio of the older population ¹							
Age Group	1961	2001	2011	2021	2031	2041	2051
60 to 70 years	NA	103	100	97	102	105	102
70 to 80 years	NA	99	108	103	100	108	111
80 years and above	NA	105	104	114	106	104	115

The sex ratio (number of females per 1000 males) "of the older population in India is in the favor of females, just as in other part of world. Women comprise a majority of this population because female life expectancy is higher. The variation in the sex ratio is small for younger people, but among people aged 70 above and 80 above the sex ratio is expected to continue to increase between 2011 and 2051.

Protection Under The Constitution Of India

In India, to protect elderly persons, constitutional and legal provisions were enacted. "To protect and promote the elderly, the basic and fundamental rights of elderly people were flamed. For instance, elderly people should not be thought of as useless to society simply because some of them may need more care than the average person. Some of the basic fundamental rights of the elderly are: right to security, right to health care, right to an adequate standard of living, right to nondiscrimination, right to participation and right to be free from torture or cruel, inhuman or degrading treatment." The principles provide a broad framework for action on old age. Some of the principles are: (1) Elderly persons should have the opportunity to work and determine when to leave the workforce; (2) Elderly persons should remain integrated in society and participate actively in the formulation of policies that affect their well-being; (3) Elderly persons should have access to health care to help them maintain the optimum level of physical, mental and emotional well-being; (4) Elderly people should be able to pursue opportunities for the full development of their potential and have access to educational, cultural, spiritual and recreational resources of society; (5) Elderly persons should be able to live in dignity and security and should be free from mistreatment, mental and physical abuse."

In the Constitution of India, Entry 24 in List III of Schedule VII deals with the 'Welfare of Labour' including the old-age pension, working conditions, provident funds (PFs), liability for workmen's compensation, invalidity and maternity benefits, etc. "Article 41 of the Directive Principles of State Policy has specially focused on the old-age social security. Item No. 9 of the State List and items 20, 23 and 24 of the Concurrent List relate to old age pension, social security, social insurance, economic and social planning. As per Article 41, each state within the limits of its economic capacity and development has to make effective provision for securing old-age people. Legal protection under personal laws has recognized the maintenance of parents as the moral duty. However, the position and extent of such liability vary from community to community.

The statutory provision for maintenance of parents under the Hindu personal law is contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956. "This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents who are financially unable to maintain themselves. Children have a duty to maintain their elder parents even under the Muslim law. The parents have a right of maintenance from their children and grandchildren who have the means, even if they are able to earn their livelihood. The Christians and Parsis have no personal laws providing for maintenance for the parents. Parents who wish to seek maintenance have to apply under the provisions of the Criminal Procedure Code. The provision for maintenance of parents was introduced for the first time in 1973, thereby inserting in Section 125, the Code of Criminal Procedure. It is a secular law that governs persons belonging to all religions and communities. Daughters, including married daughters, also have a duty to maintain their parents."

Legal Protection

The government has realized that apart from the destitute "elderly who need economic support and care through institutionalization, a large portion of economically and physically fit elderly also require social, emotional and psychological security, and there is an urgent need to supplement the traditional family support systems at a local rather than national or state level."

The "Maintenance and Welfare" of Parents and Senior Citizens Act, 2007:

"Ministry of Law and Justice drafted a legislature titled 'The Maintenance and Welfare of Parents and Senior Citizens Act, 2007' and it was published on December 31, 2007, after receiving the assent of President on December 29, 2007. The Act mentions that the person would be considered as a 'senior citizen' if he is a citizen of India and has attained the age of 60 years or above."

The Code Of Criminal Procedure, 1973: "All the above mentioned acts have served people either to provide for their old age or to protect them if their children die while working and therefore cannot care for their old and ailing parents. A provision under Section 125 of Code of Criminal Procedure (hereinafter referred as Cr.P.C. 1973) is made if any person having sufficient means neglects or refuses to maintain his father or mother who is unable to maintain him or herself. As per Section 125 of Cr.P.C. 1973, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his father or mother, at such monthly rate, as the magistrate thinks fit and to pay the same to such person as the magistrate may from time to time direct. Such allowance shall be payable from the date of the order or if so ordered from the date of the application for maintenance."

The Hindu Succession Act, 1956: In case of the death of a son, the mother inherits the property of the deceased son along with other heirs. She takes her share absolutely. "Chastity, divorce or remarriage of the mother is no bar to his

benefit. The adoptive mothers as well as mother of an illegitimate child are covered under this act, to the exclusion of a step mother. The father inherits the whole property of the intestate son in the absence of any other heir. He can inherit properly from his adoptive son, but not from his illegitimate son or his step son."

The Hindu Adoption and Maintenance Act, 1956: "The statutory provision for maintenance of parents under Hindu personal law is contained in Section 20 of the Hindu Adoption and Maintenance Act, 1956. This Act is the first personal law statute in India, which imposes an obligation on the children to maintain their parents."

CONCLUSION

The rights of elderly persons can be divided into three main categories: protection, participation and image. "Protection refers to securing the physical, psychological and emotional safety of older persons with regards to their unique vulnerability to abuse and ill treatment. Participation refers to the need to establish a greater and more active role for older persons in society. Thus, we find that there are numerous governmental plans and policies for the welfare of elderly persons. It can be said that we have legal mechanism under different laws to protect the rights of elderly. Our social security mechanism is disappeared with the passage of time. That is why elderly need other option that is legal mechanism. But this mechanism requires attention and efforts of the aggrieved party. There is no doubt that welfare officer do the formalities for the protection of the rights of elderly on their behalf. Still elderly must have the knowledge and awareness about the rights of themselves. It can be said that we have legal mechanism under different laws to protect the rights of elderly. Our social security mechanism is disappeared with the passage of time. That is why elderly need other option that is legal mechanism. But this mechanism requires attention and efforts of the aggrieved party. There is no doubt that welfare officer do the formalities for the protection of the rights of elderly on their behalf. Still elderly must have the knowledge and awareness" about the rights of themselves.

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